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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,340	11/19/2001	Henry E. Agbaje	MTC6802 (39-21 (52652))	8785

321 7590 09/24/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

CLARDY, S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,340

Applicant(s)

Agbaje et al

Examiner

S. Mark Clardy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 16, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above, claim(s) 2-7, 9, 11-40, 42-46, 48, and 50-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 8, 41, and 47 is/are rejected.
- 7) ☒ Claim(s) 10 and 49 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3, 5, 8 6) ☐ Other:

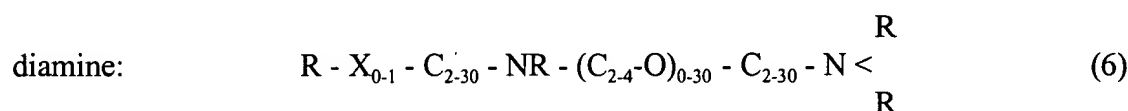
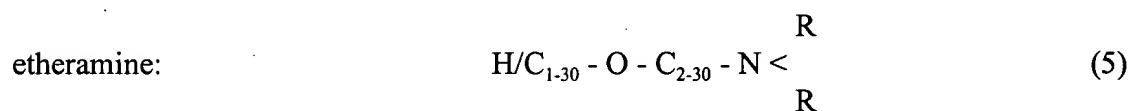
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Claims 1-55 are pending in this application which is a continuation-in-part of SN 09/926,521, which was filed under 35 USC 371 as the national stage application of PCT/US01/16550, filed May 21, 2001, which claims the benefit under 35 USC 119(e) of US Provisional Applications No. 60/206,628 (May 24, 2000), 60/205,524 (May 19, 2000), 60/273,234 (March 2, 2001), and 60/274,368 (March 8, 2001).

Applicants' claims are drawn to aqueous pesticidal compositions comprising a water soluble pesticide, surfactant, and a compound which affects cell membrane permeability. The claims have been grouped for restriction under 35 U.S.C. 121 as follows:

- I. Claims 1, 2, 8, 10, 41, 47, and 49, drawn to dual component surfactant compositions, classified in class 510, subclass depending on the surfactant components.
- II. Claims 3 and 42, drawn to pesticidal compositions comprising a pesticide and surfactant, classified in class 514, subclass depending on the active agent.
- III. Claims 4, 43, 53-55, drawn to herbicidal compositions and methods, classified in class 504, subclass depending on the active agent.
- IV. Claims 5, 6, 7, 9, 11-40, 44-46, 48, 50-52, drawn to glyphosate compositions and methods of use, classified in class 504, subclass 206.

In the response filed June 30, 2003, applicants elected the invention of Group I, and the species comprising the etheramine of formula (5) and the diamine of formula (6):



wherein: each R group above may be -H, -C₁₋₃₀, or -(C₂₋₄-O)₁₋₅₀ - H/C₁₋₄

X is -O-, -N(C₂₋₄)-, -CO-, -COO-, -OCO-, -N(H/C)-CO-, -CONR-, -S-, -SO-, -SO₂-.

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Claims 3-7, 9, 11-40, 42-46, 48, and 50-55 have been withdrawn from consideration as being drawn to an invention nonelected without traverse. Claim 2 has been withdrawn from consideration as being drawn to a nonelected species. Note that claim 41 would have been withdrawn because it refers to a cationic composition with an agriculturally acceptable anion A-, although there is no such ionic component in the first shown structure. Thus this claim is taken as being intended to read on the elected species.

Again, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Claims 1, 8, 10, 41, 47, and 49 have been examined only insofar as they read on the elected species.

Claims 10 and 49 are objected to under 37 CFR 1.75 as being exact duplicates of claims 8 and 47. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). These claims have not been treated further on the merits.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 41 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the

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invention. As noted above, the structure of the first component does not show the A component, although one is described in the body of the claim.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 41, and 47 are rejected under 35 U.S.C. 102(a), (b), and (e) as being anticipated by Crutcher (US 6,080,713).

Crutcher teaches surfactant compositions for cleaning laundry comprising 95-50% of a nonionic water soluble surfactant and 5 to 50% of a polyalkoxylated amine (col 2, lines 39-54) or diamine (lines 55-66), or mixtures thereof (lines 66-67). Among the nonionic water soluble surfactants are alkoxylated nonionic diamines (col 4, lines 38-41; col 5, lines 46-61).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 8, 41, and 47 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Crutcher, discussed above.

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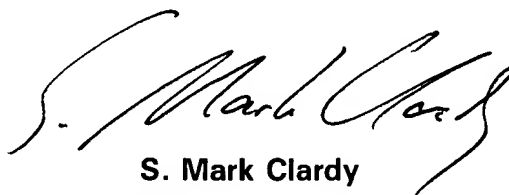
Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' elected etheramine and diamine surfactants because these components were known to be useful in combination for laundry detergents. It is immaterial whether the cited prior art is nonanalogous when the components of the compositions are the same.

No unobvious or unexpected results are noted; no claim is allowed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.



S. Mark Clardy
Primary Examiner
AU 1616

September 17, 2003